In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 516

BILLY GENE COMPTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on August 4, 1966. The petition for a writ of certiorari was filed on September 3, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether 18 U.S.C. 1952, in punishing interstate travel with intent to promote or establish an illegal gambling enterprise, is within the constitutional power of Congress.

STATUTE INVOLVED

18 U.S.C. (1964 ed.) 1952, as amended, provides in pertinent part:

> (a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—
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> (1) distribute the proceeds of any unlawful activity; or
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> (2) commit any crime of violence to further any unlawful activity; or
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> (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,
>
> and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.
>
> (b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States,

or (2) extortion or bribery in violation of the laws of the State in which committed or of the United States.

* * * *

STATEMENT

After a jury trial in the United States District Court for the Western District of Tennessee, petitioner was convicted of having traveled from Arkansas to Tennessee with intent to promote a gambling enterprise unlawful under the statutes of Tennessee, and of having thereafter carried on such unlawful enterprise, in violation of 18 U.S.C. 1952.[1] He was sentenced to imprisonment for five years and to pay a $5,000 fine (R. 5-8). The court of appeals sustained the constitutionality of Section 1952, but reversed petitioner's conviction on the ground of improper questioning by the prosecutor and remanded for a new trial.

ARGUMENT

There is no occasion for review of the interlocutory decision of the court of appeals. The constitutionality of Section 1952—uniformly and repeatedly upheld by the lower federal courts[2]—presents no substantial

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[1] Petitioner was also charged with aiding and abetting the interstate travel for such illegal purpose of two employees. As to one count so charging the court directed a judgment of acquittal; as to the other the jury acquitted.

[2] See *United States* v. *Zizzo*, 338 F. 2d 577 (C.A. 7), certiorari denied, 381 U.S. 915; *Turf Center, Inc.* v. *United States*, 325 F. 2d 793 (C.A. 9); *Bass* v. *United States*, 324 F. 2d 168 (C.A. 8); *Marshall* v. *United States*, 355 F. 2d 999

question. The power of the federal government to regulate interstate commerce in support of the public policy of the States is well established (see, *e. g., Lottery Case*, 188 U.S. 321, 356-364; *Hoke* v. *United States*, 227 U.S. 308, 320-323; *Caminetti* v. *United States*, 242 U.S. 470), and no conceivable question under the Double Jeopardy Clause is raised since it was not necessary that petitioner be convicted in a State court in order to be convicted under Section 1952.

Moreover, here, as in *United States* v. *Compton*, 355 F. 2d 872 (C.A. 6), certiorari denied, 384 U.S. 951—a case almost identical in its facts—the evidence establishes that the questioned travel was directly and immediately related to the establishment of the unlawful enterprise.[3] Whatever problems may be pre-

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(C.A. 9); *United States* v. *Borgese*, 235 F. Supp. 286 (S.D. N.Y.); *United States* v. *Teemer*, 214 F. Supp. 952 (N.D. W. Va.); *United States* v. *Ryan*, 213 F. Supp. 763 (D.C. Colo.); *United States* v. *Barrow*, 212 F. Supp. 837 (E.D. Pa.); *United States* v. *Smith*, 209 F. Supp. 907 (E.D. Ill.).

[3] The evidence showed that a gambling operation in West Memphis, Arkansas, in which petitioner was a silent partner was raided by State authorities in July 1963. Shortly thereafter, petitioner listed his West Memphis home for sale (R. 31-32, 38-41, 153-155, 191-192). On November 14, 1963, petitioner went to Memphis where, he testified, that he discussed with one friend the possibility of going into the used-car business and with another the "Paddock Club" which that friend was building (R. 131-135). The following day, petitioner rented a truck at his own expense and moved some restaurant equipment into the Paddock Club (R. 138-140). On November 20, 1963, petitioner moved himself and his family from West Memphis, Arkansas to Memphis, Tennessee. Petitioner opened the club on December 2, 1963. He changed

sented in a case where the relationship between the interstate travel and the unlawful enterprise is tenuous (see *United States* v. *Hawthorne*, 356 F. 2d 740, 742 (C.A. 4), certiorari denied, 384 U.S. 908) are thus not involved. The government's case was not bottomed on any theory that interstate travel by one engaged in an illegal enterprise is, without more, a violation of Section 1952. A jury could reasonably conclude that the travel here was for the specific purpose of engaging in an unlawful gambling enterprise. There is accordingly no basis for the contention that petitioner cannot constitutionally be tried for violation of Section 1952 in the circumstances of this case.[4]

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its name to "Club Valley" and operated it as a gambling establishment for shooting dice until the latter part of February 1964 (R. 140-143).

[4] Petitioner does not advance his position by arguing (Pet. 8) that he could as conveniently have operated the new establishment from his home in West Memphis. If petitioner had maintained his residence in Arkansas and journeyed each day to Tennessee, he would clearly have violated the statute.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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